IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 36 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH H RAJPUT

Versus

M/S. RAJASTHAN STORES

Appearance:

MR PRANAV G DESAI for Petitioner

Mr.Prabhav A. Mehta, for MR KS NANAVATI for Respondent No. 1 and 2

(MR KG YAGNIK) for Respondent No. 3

Mr.B.D. Desai, APP, for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. Food Inspector of Vadodara Municipal Corporation, by filing this appeal under Section 378(4) of the Code of Criminal Procedure, has challenged judgment and order

dated January 30, 1989, passed by learned Judicial Magistrate, First Class (Municipal), Vadodara, in Criminal Case No.253 of 1983, by which judgment and order, respondents Nos. 1, 2 and 3 came to be acquitted for the charges framed against them under Section 2(A), 7(1) and 16(1)(a) of the Prevention of Food Adulteration Act, 1954 ('Act' for short).

2. Appellant, Mr. S.H. Rajput, had inspected shop of M/s. Rajasthan Stores, which was dealing in food-grains in wholesale and other provisionary articles, and had collected samples of clove. The appellant purchased 600 grams of clove and paid price thereof to the owner of the shop. The said quantity of 600 grams of clove was divided into three equal parts. The said quantity of clove was, thereafter, put in glass bottle. The bottle was sealed and, thereafter, labels bearing the signature of Food Inspector, Vadodara Municipal Corporation, were affixed. A detailed panchanama of proceeding was drawn at the shop in presence of panchas. As per the procedure laid down under the Act and the Rules, one bottle of sample of clove was sent to Public Analyst for analysis. As per the report of the Public Analyst, the sample of clove did not conform to the standard prescribed under the act. The appellant made enquiries from the owner of Rajasthan Stores as to from which dealer said quantity of cloves was purchased. Information was furnished by respondent No.1 that said quantity of clove was purchased from M/s. Arvindkumar & Company, at Ahmedabad. Accordingly, after obtaining sanction under Section 20 of the Act from the competent authority, the appellant filed a complaint against Rajasthan Stores, its partners and the firm of Arvindkumar & Company, under the provisions of the Act. The said complaint was registered as Criminal Case No.253 of 1983 in the Court of Judicial Magistrate, First Class (Municipal), Vadodara.

3. The complainant was examined at Exh.60. After recording evidence of the complainant, as prima-facie case was made out, plea of respondents Nos. 1, 2 and 3 came to be recorded, wherein, they pleaded not guilty and claimed to be tried. One Ramdhan Chunilal Shah, who was a panch at the time of drawing of panchanama, was examined at Exh.115. The appellant had also produced voluminous documentary evidence, which mainly consisted of complaint, panchanama of drawing of samples at the shop of respondent No.1, order of sanction, report of public analyst, report of Central Food Laboratory, etc. to prove the charges against the respondents.

4. Learned Magistrate, after appreciating oral as well as documentary evidence concluded that: (1) sample bottle containing clove, which was sealed at the shop of respondent No.1 was not the same which was analysed by the public analyst; (2) order of sanction to lodge prosecution against respondents Nos. 1, 2 and 3 was not valid; (3) the label, which was affixed on the sample bottle of clove, did not tally with the sample which was analysed at the Laboratory of public analyst; and (4) the complainant had failed to prove that he had collected sample of clove in clean and dry bottles as prescribed under Rule 14 of the Prevention of Food Adulteration Rules, 1955, ('Rules' for short). On the basis of abovereferred to conclusion, learned Magistrate acquitted respondents Nos.1, 2 and 3 from the charges framed against them, which has given rise to filing of this appeal by the original complainant.

5. Learned advocate Mr. Pranav G. Desai for the appellant; learned advocate Mr. Prabhav A Mehta for learned Senior Advocate Mr. K.S. Nanavati, for respondents Nos. 1 and 2, have taken me through entire record and proceedings of the trial court.

6. Learned counsel for the appellant, Mr. Desai, has, vehemently, submitted that the learned Magistrate had erred in not appreciating that the sanction obtained by the appellant under Section 20 of the Act to prosecute respondents was legal and valid. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of Suresh H. Rajput and others vs. Bhartiben Pravinbhai Soni and others, reported in 1996 (7) Supreme Court Cases 199, wherein, the Supreme Court has ruled that, when sanction is granted by the Health Authority, after going through the report of public analyst and other relevant material, it cannot be said that there was non-application of mind in granting sanction to prosecute vendors. It is observed by the Supreme Court that, at the stage of granting sanction, it was not open for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal, etc. The principle laid down by the Supreme Court in Suresh H. Rajput (supra) squarely covers the facts of this case. In the present case, the local health authority had applied its mind by going through the report of the public analyst and other materials produced by the appellant. In view of the above facts, the finding arrived at by learned Magistrate that there was no valid sanction to prosecute the respondent as prescribed under Section 20(1) of the Act, deserves to be

quashed and set aside, and it is held that there was valid sanction before lodging prosecution against respondents Nos.1, 2 and 3.

7. Learned counsel for the appellant, next, contended that evidence of the appellant clearly establishes that, while taking samples of clove and filling in the bottles, the bottles were clean and dry. Therefore, the appellant had not committed breach of Rule 14 of the Rules. In my opinion, submission of learned counsel for the appellant deserves to be rejected. If evidence of appellant at Exh.60 is read carefully, it becomes clear that he had not verified whether the bottles, in which samples of clove were filled in, were cleaned, dry and were sufficiently tight to prevent leakage, evaporation, or there was no entrance of moisture in the bottles. In my opinion, the finding recorded by learned Magistrate that there was breach of Rule 14 of the Food Adulteration Rules is, therefore, eminently just and proper and deserves to be confirmed.

8. In the case of State of Gujarat vs. Bhagchand Sadhumal and another, reported in 1999 (3) GLR 2220, the Court held that, if there was breach of Rule 14 of the Rules, which are mandatory in nature, then the order of conviction cannot be sustained. In the case of Bhagchand Sadhumal (supra), the Food Inspector had deposed before the Court that bottles were brought by the peon and the Food Inspector was not certain whether bottles which were brought were dry and clean. On the above facts, the Court held that it was difficult to say that samples were collected in clean and dry bottles. In the present case also, the Food Inspector had deposed in cross examination that he had not verified whether the bottles were cleaned and dried before he filled in the samples of clove. He also admitted in his cross examination that there was no facility of drying the bottles in his office after the same were cleaned with water. It is well settled principle that requirement of Rule 14 is mandatory and, if there is breach of the said Rule, then the prosecution case falls through ground. As there was breach of Rule 14 of the Food Adulteration Rules, in my opinion, the order of acquittal deserves to be confirmed.

9. Learned Magistrate has concluded that, as per the panchanama, on the sample bottles, label containing code number of local health authority, SR No.790, was affixed. The report of public analysis does not mention that the sample bottle was having label of Code SR No.790. It raises serious doubt whether the same bottles, in which samples of clove were stored, were sent for analysis. On

this ground also, the prosecution case fails. The net result of the abovereferred to conclusion is that the prosecution has failed to prove that sample of clove which was collected from the shop of respondent No.1 was the same which was sent for analysis to the public analyst. This fact also destroys the the case of prosecution that, as per the report of the public analyst, sample did not conform to the standard prescribed under the Act. As there was breach of Rule 14 which is mandatory and the identity of sample bottle was not established by the prosecution, the order of learned Magistrate deserves to be confirmed.

10. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned counsel for the appellant has failed to dislodge the reasons given by the learned Magistrate in order to convince me to take the view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

11. For the foregoing reasons, the appeal, being merit less, is dismissed.

(M.H.Kadri, J.)

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